



BILLING CODE 6717-01-P  
DEPARTMENT OF ENERGY  
Federal Energy Regulatory Commission

[Docket Nos. UL19-1-000; UL19-2-000]

Central Hudson Gas & Electric Corporation; Notice of Pending Jurisdictional Inquiry,  
and Soliciting Comments, Protests, and Motions to Intervene

On May 9, 2019, the Federal Energy Regulatory Commission (Commission) received a request from the U.S. Department of the Interior's Fish and Wildlife Service (FWS) for an updated jurisdictional determination for the unlicensed Sturgeon Pool and Dashville Hydroelectric Projects. The projects are located on the Wallkill River in Ulster County, New York.

Pursuant to section 23(b)(1) of the Federal Power Act, a non-federal hydroelectric project must be licensed (unless it has a still-valid pre-1920 federal permit) if it: (a) is located on a navigable water of the United States; (b) occupies lands or reservations of the United States; (c) utilizes surplus water or waterpower from a government dam; or (d) is located on a stream over which Congress has Commerce Clause jurisdiction, is constructed or modified on or after August 26, 1935, and affects the interests of interstate or foreign commerce.<sup>1</sup>

A stream is navigable under section 3(8) of the FPA if: (1) it is currently being used or is suitable for use, or (2) it has been used or was suitable for use in the past, or (3) it could be made suitable for use in the future by reasonable improvements, to transport persons or property in interstate or foreign commerce. Navigability under section 3(8) of the FPA is not destroyed by obstructions or disuse of many years; personal or private use may be sufficient to demonstrate the availability of the river for commercial navigation; and the seasonal floatation of logs is sufficient to determine that a river is navigable.

Commission staff previously investigated the Commission's jurisdiction over the Sturgeon Pool and Dashville Hydroelectric Projects. In 1988, staff determined that the projects were non-jurisdictional based on staff's finding that the Wallkill River was not navigable at the location of the projects.<sup>2</sup> Commission staff's prior finding relied

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<sup>1</sup> 16 U.S.C. 8171 (2012).

<sup>2</sup> See *Central Hudson Gas & Electric Co.*, 44 FERC ¶ 62,215 (1988) (Dashville Hydroelectric Project in Docket No. UL88-18-000); *Central Hudson Gas & Electric Co.*,

primarily on historical usage of the river. FWS requests that the Commission reexamine navigability of the Wallkill River and look specifically at the river's suitability for commercial use. A stream's suitability for commercial use can be demonstrated based on its physical characteristics, as well as its actual use or suitability for use for recreational boating, if this information shows the river is suitable for the simpler types of commercial navigation.<sup>3</sup>

In response to FWS's request, Commission staff is investigating the jurisdictional status of the Sturgeon Pool Hydroelectric Project (UL19-1-000) and Dashville Hydroelectric Project (UL19-2-000). A copy of FWS's request may be viewed on the Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number, UL19-1-000 or UL19-2-000, excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502-8659.

The Commission is soliciting comments, motions to intervene, and protests in these proceedings. Comments, motions to intervene, and protests must be filed by **45 days from notice or August 8, 2019**. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure, 18 CFR 385.210, 211, and 214. In determining the appropriate action to take, the Commission will consider all protests or comments filed, but only those who file a motion to intervene in accordance with the Commission's Rule may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington,

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44 FERC ¶ 62,216 (1988) (Sturgeon Pool Hydroelectric Project in Docket No. UL88-22-000).

<sup>3</sup> See *FPL Energy Maine Hydro LLC v. FERC*, 287 F.3d 1151, 1158 (D.C. Cir. 2002) (affirming navigability finding based on stream characteristics and test trips by canoe).

DC 20426. The first page of any filing should include Docket Numbers UL19-1-000 and/or UL19-2-000.

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Dated: June 24, 2019.

Kimberly D. Bose,  
Secretary.

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